

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

**IN RE: VALSARTAN, LOSARTAN,
AND IRBESARTAN PRODUCTS
LIABILITY LITIGATION**

This Document Relates to All Actions

MDL No. 2875

Honorable Robert B. Kugler,
District Court Judge

Oral Argument Requested

**TEVA DEFENDANTS' MOTION TO AMEND OR
CORRECT OPINION ON LIABILITY EXPERT REPORTS
UNDER FRE 702 (ECF NO. 2581) AND ORDER ON
LIABILITY EXPERT REPORTS UNDER FRE 702 (ECF NO. 2582)**

Teva Pharmaceuticals USA, Inc.; Teva Pharmaceuticals Industries Ltd.; Actavis LLC; and Actavis Pharma, Inc. (collectively, “Teva” or “Teva Defendants”) respectfully move the Court to amend and/or correct the Opinion on Liability Expert Reports Under FRE 702 (ECF No. [2581](#)) (“Opinion”) and Order on Liability Expert Reports Under FRE 702 (ECF No. [2582](#)) (“Order”) as to a discrete issue impacting Teva’s expert Timothy Anderson. The purpose of this motion is to address what appears to be an inadvertent application of the Court’s Opinion and Order to the contents of Mr. Anderson’s unchallenged class certification report, rather than to Mr. Anderson’s liability report that was the subject of Plaintiffs’ motion to exclude (ECF [2297](#)). Specifically, both the Opinion and Order refer to and state specific exclusions by paragraph with respect to Mr. Anderson’s *class certification* expert

report, submitted January 12, 2022, which was neither the subject of motion practice nor challenged by Plaintiffs during the class certification phase of this litigation, rather than Mr. Anderson's TPP Trial ***Liability*** Report submitted on December 19, 2022, which was the report challenged by Plaintiffs' Motion to Preclude the Opinions of Defense Expert Timothy Anderson (*See* ECF No. [2297](#) (exhibits including expert report filed under seal)).

Respectfully, in bringing this motion, Teva does not adopt, approve, or endorse the bases or conclusions stated in the Opinion or Order for limiting Mr. Anderson's opinions at the forthcoming TPP Trial, and Teva expressly submits this motion without waiver of its right to challenge said rulings through further motion practice, at trial, or on appeal. However, understanding the Court's rulings for purposes of the Rule 702 motions and the TPP Trial and seeking to correct the record and to avoid confusion at the TPP Trial, Teva moves the Court to issue a corrected Opinion and Order on Plaintiffs' Motion (ECF [2297](#)), which addresses Mr. Anderson's December 19, 2022 TPP Trial Liability Report and eliminates references to Mr. Anderson's unchallenged January 12, 2022 class certification expert report.

In an effort to promote consistency in the Court's rulings and reasoning, and without waiver of any rights, Teva submits that an Amended Order and Opinion

should be entered to conform to the reasoning of the Court's Opinion and Order, and applied to Mr. Anderson's TPP Trial Liability Report in relevant part as follows:

The following paragraphs are PRECLUDED:

- ¶¶ 20-21
- ¶¶ 28-29, 78, 90, 101, 120, 130, 190, 213, 222-223, 224¹

The remaining paragraphs are NOT PRECLUDED, including, specifically:

- ¶¶ 39-48

Dated: January 16, 2024

Respectfully submitted,

By: /s/ Gregory E. Ostfeld

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¹ Teva notes that while these paragraphs from Mr. Anderson's TPP Liability Report are identified for preclusion based on the Court's ruling that Mr. Anderson may not state a legal opinion about the meaning of an FDA guidance or imply that "**he is an expert** on the meaning and interpretation of FDA regulations and on the FDA definition of adulteration and on how the FDA applies that definition to drugs," (Opinion at 8 (emphasis added)), all of the opinions in Mr. Anderson's report and as stated at his deposition are based on his four decades of experience in the pharmaceutical industry and review and analysis of materials relevant to this litigation.

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Actavis LLC, and Actavis Pharma, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 16, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all CM/ECF participants in this matter.

/s/ Gregory P. Coates
Gregory P. Coates,
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